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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,402	10/29/2003	Jeffrey B. Hardesty	DP-309961 (444859-093)	7386

22851 7590 07/21/2006

DELPHI TECHNOLOGIES, INC.  
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EXAMINER

YEE, DEBORAH

ART UNIT	PAPER NUMBER
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1742

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/696,402	<b>Applicant(s)</b> HARDESTY ET AL.	
	<b>Examiner</b> Deborah Yee	<b>Art Unit</b> 1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 8-10, 12-25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-10, 12-25 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: The admitted prior art in paragraph 4 on page 2 refers to U.S Patent application Publication No. 2001/0030004 to Kushida et al. yet according to PTO palm system this application Publication No. does not exist. It is recommended to use U.S. Patent application No. 09/822,233 or US patent No. 6379,831.

Appropriate correction is required.

### ***Claim Objections***

2. Claims 12 and 13 are objected to because of the following informalities: Claims 12 and 13 are dependent on canceled claim 11. Appropriate correction is required.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 8 to 10, 12 to 25 and 27 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8 to 10, 12 to 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishikawa et al (US Patent 5,124,529).

6. Nishikawa in claims 1 to 5 of column 5 discloses a flux-cored wire for welding stainless steel having a composition with constituents whose wt% ranges overlap those recited by the claims; such overlap establishes a prima facie case of obviousness because it would be obvious for one skilled in the art to select the claimed alloy wt% ranges over the broader disclosure of the prior art since the same utility is taught (welding stainless steel for automotive exhaust systems).

7. Although the additional flux component is incorporated with the filler metal by the prior art, such would not be excluded from applicant's claimed composition reciting "comprising". Moreover, the presence of flux to form a slag during welding to prevent oxidizing to occur would not appear to affect the basic and novel characteristics of the present invention.

8. Also similar to present invention Nishikawa discloses a flux-core wire (filler alloy) use to weld thin automotive exhaust system components which would include the tube or flange made of stainless or mild steel as recited by one or more of the dependent claims since these components are conventionally used in automotive exhaust system application.

9. Also, line 30 and table 1 of column 6 discloses welding by gas arc welding, and hence would meet claim 18.

10. Even though prior art does not teach forming a weldment comprising an amount of martensite (20 to 60% or preferably 30 to 40%) to increase the volume of the weld thereby at least to partially offset shrinkage of the weld upon cooling as recited by one or more of the claims, such property would be expected since steel welding wire


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composition is closely met, and is processed in the same manner as applicants by using gas arc welding, and in absence of proof to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah Yee whose telephone number is 571-272-1253. The examiner can normally be reached on Monday-Friday from 6:00 to 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Deborah Yee  
Primary Examiner  
Art Unit 1742

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